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Macedonia's Nationals, Minorities and Refugees in the Post-Communist Labyrinths of Citizenship

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Working Paper 2010/05



European Research Council



University of Edinburgh, School of Law
The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia
(CITSEE)

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Labyrinths of Citizenship**

Ljubica Spaskovska

This paper has been produced in close collaboration with the European Union Democracy Observatory on Citizenship (EUDO-Citizenship) and has been made available as a EUDO country report on www.eudo-citizenship.eu. The paper followed the EUDO structure for country reports presenting historical background, current citizenship regimes and recent debates on citizenship matters in the country under scrutiny. Other materials that complement this paper such as citizenship-related legislation, citizenship news, chronology, adopted international conventions and bibliography are also available on the EUDO website.

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Macedonia's Nationals, Minorities and Refugees in the Post-Communist Labyrinths of Citizenship

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Abstract

The paper provides an overview of the evolution of the Macedonian citizenship regime in view of the political and social transformation processes since 1945 and in particular after the dissolution of Yugoslavia. By arguing that the different stages in the development of the citizenship regime were significantly conditioned by the wider context and external international factors, the paper seeks to capture the interplay between the internal socio-political and institutional changes, regional developments and the understanding of citizenship. This paper includes a historical account of citizenship policies on the territory of Macedonia since the Ottoman Empire, a detailed analysis of the current citizenship regime, as well as an overview of the current citizenship-related political debates.

Keywords:

Macedonia, Yugoslavia, citizenship, former Yugoslav citizens, refugees.

1 Introduction

On 8 September 1991 Macedonia announced its independence from the disintegrating Yugoslav Federation. It took another year to adopt its first Citizenship Law in November 1992. It is within this complex political context, which included being unable to obtain international recognition and assume a seat in the UN, that the development of the Macedonian citizenship regime must be analysed: this framework caused political instability and profound socio-political changes.

Apart from the three republican citizenship laws Macedonia adopted as part of socialist Yugoslavia in 1950, 1965 and 1977, there are two temporal reference points where historical circumstances and core political developments directly influenced the relevant citizenship legislation. These were the period between 1991-2001 before the *Ohrid Framework Agreement* in August 2001 which ended internal armed conflict between ethnic Albanian rebels and the Macedonian government; and the post-2001 period when Macedonia significantly amended its citizenship legislation in 2004 as part of the post-2001 overall reconciliation process.

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The first decade of Macedonian statehood coincided with complex political developments in the country and across the region: the Yugoslav wars, the Greek embargo, sanctions against the Federal Republic of Yugoslavia which indirectly influenced Macedonia, as well as the influx of refugees during the Kosovo crisis in 1999. All of this further undermined the internal fragile inter-ethnic balance and delicate political bargaining. The 1992 citizenship law left a still undetermined but considerable number of non-national residents, mainly ethnic Albanians and Roma without regulated citizenship status. The law established a fifteen-year continuous and cumulative residency requirement and incorporated certain other provisions which were, together with dubious administrative practices, widely criticised for their discriminatory implications. Above all, problems lay in the selective implementation of the law, the discretionary powers of the administrative staff of the Ministry of Interior who had the power to decide upon the applications and the slow, expensive and inefficient administrative procedures.

The 2001 *Ohrid Framework Agreement* transformed the very essence of the Macedonian state. It ended hostilities between the state and the armed groups within its Albanian community and established the basis for constitutional amendments and modifications of the legal system which transformed Macedonia from a polity conceived as a nation-state of the Macedonian people to a multi-ethnic one. The core of this is a *de facto* consociational democracy, under which the new decentralised territorial re-organisation allowed for Albanian and the other minority languages to be promoted to having the status of official languages and guaranteed proportional representation in the state administration, the police and the Army for non-majority ethnic communities. The post-2001 period, particularly after the ratification and entry into force of the *European Convention on Nationality* in 2003, brought a significant reform of the citizenship regime per se, including a new residence requirement of eight years and another transitional provision targeting former Yugoslav citizens who stayed in Macedonia.

Although most of the cases of residents without regulated citizenship have now been resolved, consensus is lacking on many pertinent issues, such as the post-2001 political organisation and conception of the state, where contestation of the politics of numbers is always a prominent element. Even now, the so-called 'purification' of the electoral registry remains a pending task and the census data is still being debated. This implies a perception of numbers having importance in determining who has a right to lay claim to disputed and or ethnically-mixed territories and to claim the status of a constituent people. Furthermore, problems relating to the civil registration of the Roma community, the double Macedonian-Bulgarian citizens and the prospects of integration into the EU and NATO remain some of the core issues to be tackled and debated in the future.

2 Historical background

2.1 *The pre-1945 Period*

At the beginning of the twentieth century, the present-day Republic of Macedonia was part of the last European provinces of the Ottoman Empire, namely, the geographic region of Macedonia which was comprised of the three administrative regions (*vilayets*) of Salonika (Thessaloniki), Monastir (Bitola) and Uskub (Skopje). Until the demise of the Ottoman Empire in the Balkans during the Balkan Wars 1912-1913, the population of this region (Macedonian Slavs, Turks, Albanians, Bulgarians, Vlachs, Greeks, Jews, Roma) was subject to the Ottoman Law on Nationality of January 19, 1869 which was adopted as part of the wider *Tanzimat* reforms. Art. 9 of the Law stipulated that 'every person inhabiting the imperial dominions is considered an Ottoman subject and treated as an Ottoman subject' (Flournoy and Hudson 1929: 569).

The Ottoman Empire did not inquire into the racial, ethnic or national identities of its subjects but it was interested in their religious affiliation. As scholars have pointed out, the Ottoman imperial government felt no need for these classifications because the information was gathered principally for the purposes of determining potential tax revenue and the number of soldiers to be recruited, for which wealth and religion - not ethnicity - were the only two relevant categories (Yosmaoğlu 2006). This observation provides a crucial insight into the future political developments and definitions of citizenship regimes after the First World War. Since class and religion have been the primary lines of political and socio-cultural demarcation and grouping for centuries, the establishment of the Balkan nation-states and the attempts at defining the initial body of citizens in national and ethnic terms after the Balkan Wars and the First World War rendered the political maps of the region even more complex, with long-lasting consequences and contested issues of identity and citizenship.

After the establishment of the Kingdom of the Serbs, Croats and Slovenes in 1918, which from 1929 onwards became known as the Kingdom of Yugoslavia, the present day Republic of Macedonia was officially considered to be part of Serbia and its Slavic Orthodox population to be of Serbian ethnic descent. The Macedonian Slavs were referred to as Southern Serbs. Birth, school certificates and other official documents from the interwar period witness the state's practice to change or modify personal and family names in Macedonia by adding typically Serbian suffixes (Katardziev 1969; Rossos 2008; Friedman 2000). The Kingdom enacted its own citizenship law in 1928 which provided for a single Yugoslav citizenship (Ragazzi and Štiks 2009).

Although outlawed at the end of 1920, the Communist Party of Yugoslavia, along with the Comintern, played a crucial role in the overall emancipation of the Macedonians and their eventual recognition as separate and equal nation in a future communist Balkan or Yugoslav Federation (Rossos 2008). After much debate the Balkan Communist Parties and the Comintern recognised the Macedonians as a distinct Slavic nation in 1934. This laid the basis for the future inclusion of Macedonia as a distinct and constitutive nation and federal republic in post-1945 Yugoslavia.

During the Second World War that part of geographical Macedonia which belonged to the Yugoslav Kingdom was under occupation of the Bulgarian Axis forces and was therefore considered to be part of the Bulgarian state. Hence, the people of Macedonia, including a significant Sephardic Jewish community, were considered Bulgarian subjects under the 1940 Law on Bulgarian Nationality. However, the Jewish population 'from the occupied territories was apparently not granted Bulgarian citizenship, while Greeks and Macedonians were' (Smilov and Jileva 2009: 242). This allowed for the deportation of the Macedonian Jews to the Treblinka concentration camp, unlike the vast number of Bulgarian Jews who managed to avoid the Nazis' extermination policies.

2.2 The post-1945 Period

With the Second World War's end in 1945, the Yugoslav socialist federation was established which preserved the same approximate borders as those of the defunct Kingdom of Yugoslavia. Although Macedonia entered post-Second World War socialist Yugoslavia as an equal partner and was, for the first time in its history, recognised as a separate political, national and cultural entity, it was *de facto* a 'junior partner' in a federation politically and economically dominated by Serbia, Croatia, and Slovenia (Rossos 2008: 235). Nevertheless, being one of the constituent Yugoslav nations, it underwent a transition which finalised its nation-building process: the codification of the alphabet and the language was followed by the establishment of a state university, Macedonian television and radio services, an Academy of Sciences and Arts, and state cultural institutions.

Democratic Federal Yugoslavia (later the Federal People's Republic of Yugoslavia - FPRY) enacted its first citizenship law on 28 August 1945. By virtue of this law, all previous citizens of the Kingdom of Yugoslavia as well as everyone who by ethnic descent belonged to one of the Yugoslav (South Slav) peoples (art.25), was born, and was raised or was permanently resident on the territory of Yugoslavia, would be considered a citizen of Federal People's Republic of Yugoslavia (Medvedović 1998; Ragazzi and Štiks 2009). Similarly, art. 48 of the 1946 Yugoslav Constitution established a 'single federal citizenship [whereas] every citizen of a people's republic is at the same time a citizen of the Federative People's Republic of Yugoslavia'. The most prominent feature of the post-1945 Yugoslav citizenship regime was the already well elaborated double republican and federal citizenship (Medvedović 1998, Petruševska 1998, Ragazzi and Štiks 2009). Thus, in compliance with the federal legal framework, Macedonia adopted its first republican citizenship law in 1950.² The citizenship legislation of the republics followed significant constitutional changes in 1945-1946, 1963 and 1974 and the three citizenship laws of

² Закон за државјанството на Народна Република Македонија [Law on Citizenship of People's Republic of Macedonia], *Official Gazette of the People's Republic of Macedonia* 16/50.

all six Yugoslav republics significantly mirrored certain core constitutional amendments and the ideological framing of each of the constitutions.

Even though, until Yugoslavia's dissolution from 1991 onwards, republic-level citizenship did not have significant practical relevance, it was still an important element in view of the highly decentralised federal structure which Yugoslavia developed from the early 1970s onwards³ and would become the basis for establishment of the initial citizenry of the new states after Yugoslavia's dissolution. It is worth noting that already in 1947, the Committee on Legislation and People's Governance headed by the Vice-President of the Yugoslav Government Edvard Kardelj, issued an amendment and instruction on the content of the Electoral Registries whereby below the section entitled 'Nationality' (*narodnost* - in sense of ethnic belonging) the category of 'republican citizenship' (*republikansko državljanstvo*) should be added.⁴ The 'Instruction' recalled the fact that the people's republics' constitutions and legal systems allow only citizens of the republic the right to vote in the respective republican elections immediately after the war, as outlined in the 1946 Law on Electoral Registries, and qualified the above-mentioned amendment introducing the 'republican citizenship' category in the electoral registries as a logical follow-up. Accordingly, republican citizenship conceived and institutionalized in this way in the immediate post-war period was yet another recognition of the republics' statehood.

The first Macedonian republican law on citizenship in 1950 established that the main principles for acquisition of Macedonian citizenship are by: origin if both parents are citizens of the People's Republic of Macedonia (art. 4), by birth on the territory of the republic for children of unknown or stateless parents or found/born in the republic (art. 7) and by naturalisation (a foreigner admitted to Yugoslav citizenship acquires Macedonian republican citizenship if she or he has residency in the republic or by request). More importantly, the Law in the 'Transitory and Final Provisions' established the initial body of citizens of the People's Republic of Macedonia by outlining the principles by which someone would be considered a citizen of the republic: if on 6 April 1945 he or she had municipal membership (*завичајност*) on the territory of the People's Republic of Macedonia; if before 30 June 1948 he or she made a statement in the presence of the town or regional council where he or she resided that he or she wished to be a citizen of PR Macedonia; or, if on 28 August 1945 he or she was resident outside the territory of the FPR Yugoslavia but before 6 April 1941 his

³ While the 1963 Federal Constitution defined the republic as 'a socialist democratic state community based on the power of the working people and on self-government' and omitted any invocation of the ethnicity/nationality principle, the 1974 Yugoslav Constitution re-introduced the precedence of the national dimension of the republic as 'a state based on sovereignty of nations, the authority and self-management of working people and all workers, and it is a socialist self-managing democratic community of working people, citizens and equal nations and nationalities'.

⁴ Упутство за спровођење члана 12 Закона о бирачким списковима [Instruction on the implementation of art. 12 from the Law on electoral registries], *Службени лист Федеративне Народне Републике Југославије* [Official Gazette of the Federal People's Republic of Yugoslavia], 27/47.

or her last municipal membership was somewhere on the territory of the People's Republic of Macedonia. The Law also left space for admission into Macedonian citizenship by request for those Yugoslav citizens who did not possess any other republican citizenship, without having to fulfil a one-year residency requirement (art. 27).

Art. 6 of the Law provided the modes of acquisition of citizenship for children whose one parent is a citizen of Macedonia and the other one of another Yugoslav republic: in this case the child acquired Macedonian republican citizenship by mutual agreement of both of the parents. In the case of an absence of an agreement, the child acquired Macedonian republican citizenship if at the time of birth both parents were resident in Macedonia; if the child was born in Macedonia with the parents being resident elsewhere; and if the father of the child was a Macedonian citizen. The Law also established the procedure for acquisition of Macedonian citizenship for citizens of other Yugoslav people's republics (arts. 13-19), by written request (having been resident for at least one year in Macedonia) or by marriage with a Macedonian citizen, in which case the Macedonian authorities had to inform the People's Republic whose citizen they admitted into Macedonian citizenship (art. 19). Macedonian republican citizenship was to be lost only by loss of Yugoslav federal citizenship or by acquiring a republican citizenship of another Yugoslav republic (art. 21). As with all of the other Yugoslav federal units, there were only republic-level registers of citizens.

The 1965 Law on Citizenship of the Socialist Republic of Macedonia,⁵ which replaced the previous one, contained only ten articles and represented a far more simplified version of the 1950 Law with its detailed provisions on acquisition and loss of Macedonian republican citizenship. It was apparently aimed at minimising the importance of the republican citizenship. This was in harmony with the 1964 Federal Citizenship Law that provided for a united Yugoslav citizenship, with republican citizenship conditional upon federal citizenship, as well as with the 1963 Constitution of Yugoslavia. That constitution enshrined the system of self-management, put an emphasis on social/labour relations and workers' rights, and changed the name of the state into Socialist Federative Republic of Yugoslavia (SFRY).

The only article which was transferred almost word for word to the new law was art. 1 which stated that 'only a Yugoslav citizen can have the citizenship of the Socialist Republic of Macedonia'. The provision about the acquisition of Macedonian republican citizenship by origin by children whose both parents are Macedonian citizens was significantly amended by adding a residency requirement. Thus, art. 2 of the Law stated that 'a child born on the territory of the Socialist Republic of Macedonia acquires citizenship of SR Macedonia if both of the parents are citizens of SR Macedonia and have residency on the territory of SR Macedonia.' Additionally, 'if the

⁵ Закон за државјанството на Социјалистичка Република Македонија [Law on Citizenship of the Socialist Republic of Macedonia], Службен весник на Социјалистичка Република Македонија [Official Gazette of the Socialist Republic of Macedonia], 09/65.

above conditions are not fulfilled, the child acquires citizenship of the SR Macedonia if the parents agree. If there is no mutual agreement by the parents, the child can acquire citizenship of SR Macedonia on the basis of a submitted request after coming of age.' The Law also changed and significantly facilitated the mode of acquisition of Macedonian republican citizenship by other Yugoslav citizens: 'A Yugoslav citizen acquires citizenship of the Socialist Republic of Macedonia by submitting a request' (art. 3). The modes of loss of Macedonian citizenship remained the same. What all of the above mentioned changes imply is an intentional insistence upon the civic and supra-national (Yugoslav) dimension, cross-republican mobility and an ideological shift in the Yugoslav political sphere which through the doctrine of workers' self-management tried to minimise the importance of the republics as bastions of the ethnic and national belonging.

Although art. 249 of the last Yugoslav Constitution from 1974 provided that 'Yugoslav citizens shall have a single citizenship of the Socialist Federal Republic of Yugoslavia', republics were responsible and free to draft their own citizenship legislation, which is particularly visible in the 1977 Law on Citizenship of the Socialist Republic of Macedonia that replaced the previous Law from 1965⁶. Art. 1 of the Law did not follow the previous two laws as it established that 'The citizens of the Socialist Republic of Macedonia possess citizenship of the Socialist Republic of Macedonia'. It is worth pointing out that the Law did not refer to the federal citizenship in art. 1, thus clearly revealing the confederal elements emphasised after 1974. The Law reintroduced the 1950 provision on acquisition of citizenship by origin for children both of whose parents have citizenship of the SR Macedonia, omitting the 1965 residency requirement and added precision and expanded the modes of acquisition and loss of Macedonian citizenship. Art. 3 provided five principles governing the acquisition of citizenship of the SR Macedonia: by origin, by birth on the territory of the SR Macedonia, by admission into the citizenship of SR Macedonia of citizens of another socialist republic, by naturalisation or by international agreements. While the previous 1965 Law established the acquisition of Macedonian citizenship by other Yugoslav citizens only by request or statement, this law expanded the requirements adding an age limit (at least eighteen years of age) and a permanent residency requirement (not applicable in the case of marriage to a Macedonian citizen). Art. 13 established the modes of loss of Macedonian republican citizenship: by release, by renunciation, by deprivation, by admission into the citizenship of another socialist republic or by international agreements. An interesting provision is that a minor who lost his or her Macedonian citizenship by virtue of release, renunciation or deprivation, could regain the citizenship if by the age of 25 he or she became a permanent resident of the territory of SR Macedonia and submitted a request (art. 18). The republican Secretariat for Internal Affairs did not have to provide the reasons for a

⁶ Закон за државјанството на Социјалистичка Република Македонија [Law on Citizenship of the Socialist Republic of Macedonia], Службен весник на Социјалистичка Република Македонија [Official Gazette of the Socialist Republic of Macedonia]19/77.

final negative decision on an application for acquisition of Macedonian citizenship by naturalisation or on an application for release from Macedonian citizenship (art. 20). This element of the discretionary powers of the authorities would be carried on as a practice into the 1990s.

2.3 The post-independence period

The Yugoslav political crisis reached its climax during the first half of 1991 when the six republics' presidents failed to reach a mutual agreement and an acceptable solution for the preservation and reform of the dissolving federation. Macedonia's position was a moderate one which opposed both the Serbian and the Croatian camps. The Macedonian President Kiro Gligorov and the Bosnian President Alija Izetbegović proposed a platform which aimed at reforming Yugoslavia with further confederal elements while preserving the political union. Macedonia had a pragmatic interest in lobbying for the preservation of a democratised Yugoslav union considering its weaker economic standing and a position of being surrounded by neighbouring countries which in one way or another contested its statehood.

When Macedonia proclaimed its independence on 8 September 1991, the Yugoslav Army was still stationed on its territory and Serbia exercised significant pressure on the most southern republic to remain in the new rump Yugoslavia consisting only of Serbia and Montenegro. Macedonia's position as an independent state was highly questionable until April 1992, when the Yugoslav Army eventually withdrew all of its personnel and equipment. The country also faced political pressures from Greece over the name of Macedonia, problems with its international recognition⁷, a Greek embargo 1994-1995⁸, consequences of the sanctions imposed on the Federal Republic of Yugoslavia and the growing Kosovo crisis in 1998 and 1999. The first decade of Macedonia's independence 1991-2001 was therefore one of instability, socio-political and legal uncertainties, crises, and strenuous efforts for state-consolidation. As the 1999 Report on Macedonia by the European Commission against Racism and Intolerance noted, 'Its stability has been threatened by four years of wars in the region. This increased the economic hardship, caused severe emotional distress and brought a large influx of refugees. These events also left many people at that time with an uncertain status, as regards their rights of residence and citizenship' (ECRI 1999: 7). Moreover, internal voices of discontent came from Macedonia's most

⁷ Although the Arbitration Commission of the Peace Conference on the Former Yugoslavia in its Opinion No. 6 recommended that the European Community should accept Macedonia's request for recognition concluding the country meets the required criteria, the EC was reluctant to do so. The EU established diplomatic relations with Macedonia in December 1995. Macedonia was admitted to the UN two years earlier in April 1993 under the provisional name 'Former Yugoslav Republic of Macedonia'.

⁸ Greece disapproves of Macedonia's constitutional name the 'Republic of Macedonia', as it evokes potential territorial claims on its northern province of Macedonia. On 13 September 1995 in New York, Macedonia and Greece signed an Interim Accord which formalised their bilateral relations and both states expressed a commitment to continue UN sponsored negotiations for the settlement of the name issue.

numerous ethnic minority, the Albanians. With the dissolution of Yugoslavia, Albanian status was downgraded from that of a recognised Yugoslav nationality (*narodnost*)⁹ with all political and cultural rights attached to that of a minority in independent Macedonia. Kosovo, the point of reference for many of them, became part of a foreign country. The Macedonian Albanian community boycotted the 1991 independence referendum and in January 1992 the Albanian political parties in Macedonia organised a referendum on autonomy.¹⁰ This reinforced an image of the Macedonian Albanians among the ethnic Macedonian majority as disloyal and having secessionist aspirations.

It was in this highly polarised and unstable political context in November 1992 that the belated and long debated Law on Citizenship was enacted. It was based on the principle of legal continuity with the citizenship of the Socialist Republic of Macedonia and thus 1,878,820 people *ex officio* acquired Macedonian citizenship (ECRI 1999), or about 90 per cent of the total adult population, including more than 1,430,000 adults (Lazarova-Trajkovska 1998). The contemporary media reported on the fierce debate in the Parliament on the residence requirement provision as proposed figures ranged from five to thirty years. This clearly reflected the perceived threat from the internal minorities and neighbouring countries, a phenomenon common to many small nations. The attempt at defining the initial body of citizens coalesced around the members of the nation vs. the citizens debate and was strongly embedded within the context of the dissolution of Yugoslavia. The ethnic Macedonian perception of the nation and the new Macedonian state portrayed the considerable number of Albanian non-national residents or unregistered residents from Kosovo and Serbia as a problem and a threat. These persons generally moved for educational or work purposes during the existence of socialist Yugoslavia and their citizenship status was to be resolved only later. There were also a relatively small number of refugees from the Yugoslav wars of 1992-1995 who eventually sought Macedonian citizenship¹¹ and non-

⁹ The six South Slavic nations (*narodi*) were the constituent peoples of Yugoslavia, while Albanians and Hungarians had the status of nationalities (*narodnosti*). The Roma, Slovaks, Italians, Turks, etc. had the status of minorities. The 1974 Yugoslav constitution which granted autonomy to Kosovo and Vojvodina and an equal representation on federal level insisted on the equality of all nations and nationalities, defining the federation as “a socialist self-managed democratic community of working peoples and citizens and equal nations and nationalities” (art. 1). Similarly, art. 171 established that the members of the nationalities have the right to use their mother tongue and alphabet in executing all rights and duties, in front of state organs, as well as the right to education in their own language on the territories of all federal republics and provinces.

¹⁰ One of the principal points of contestation was the Preamble of the Macedonian Constitution stating ‘the historical fact that Macedonia is established as a national state of the Macedonian people, in which full equality as citizens and permanent coexistence with the Macedonian people is provided for Albanians, Turks, Vlachs, Roma and other nationalities living in the Republic of Macedonia’.

¹¹ According to UNHCR sources, 30,000 refugees from Bosnia came into Macedonia where they were granted temporary protection. In 1998 UNHCR reported 1,400 remaining refugees, most of which were awaiting repatriation. Some of them eventually did stay in Macedonia and acquired Macedonian citizenship.

Macedonian Yugoslav Army staff serving in Macedonia at the time of dissolution who decided to stay mainly because of their Macedonian spouses.

All of these categories had to seek the acquisition of Macedonian citizenship under the 1992 Law on Citizenship¹² which was criticised for some of its controversial articles. These included, for applicants for naturalisation, the requirements to be psycho-physically healthy, proficient in the Macedonian language and in possession of a permanent source of means of subsistence. The fifteen-year requirement of continuous residence was particularly criticised.

The 'Transitional Provisions' (art. 26) of the Law established that citizens of the SFR Yugoslavia who possessed another republican citizenship and had registered permanent residence in Macedonia at the time of independence could apply for Macedonian citizenship within one year of the entry into force of the Law provided they could prove that they fulfilled the fifteen-year cumulative residence requirement and possessed a permanent source of income. These provisions received serious criticism both internally from minority groups and externally from international organisations. In particular, this was the case with regard to the short one-year transitional registration period for former Yugoslav citizens, the high residency requirement and the fact that many Albanian and Roma had to reapply through the ordinary naturalisation procedure, despite the fact that many had resided in Macedonia for many years but lacked a proof of registration or information on the procedures (Petruševska 1998; Imeri 2006). The ordinary naturalisation procedure also meant a higher administrative fee (250 USD at the time) and a satisfactory command of the Macedonian language, determined by oral examination before a governmental Commission of three language experts (ECRI 1999; Petruševska 1998). However, even fulfilling all of the criteria for regular naturalisation did not guarantee that a person would be granted Macedonian citizenship (Petruševska 1998). The procedures took a long time. The judicial disputes before the Supreme Court only returned the case for a fresh consideration at the Ministry of Interior and every request for citizenship had to pass through the National Security Office of the Ministry of Interior. Many cases were refused on the basis of the 'national security' provision, with 'a vast room for uncontrolled use of discretion' (Petruševska 1998: 171; Imeri 2006).

Emigrants constituted one of the categories eligible for facilitated naturalisation. Art. 8 of the 1992 Law on Citizenship stated that 'An emigrant from the Republic of Macedonia, as well as his first generation descendants may acquire citizenship of the Republic of Macedonia by naturalisation although he does not fulfil the requirements of art. 7, para. 1, items 2 and 8 of this law.' Macedonian legislation on citizenship, in

Resolution 1010 (1993) of the Parliamentary Assembly of the Council of Europe reported 32,000 registered refugees – 1.5 per cent of the population.

'UNHCR Global Appeal 1999 – the Former Yugoslav Republic of Macedonia' <<http://www.unhcr.org/3eaff43f2e.html>>.

¹² Закон за државјанството на Република Македонија [Law on Citizenship of the Republic of Macedonia], *Службен весник на Република Македонија* [Official Gazette of the Republic of Macedonia], 67/92.

contrast to the other states in the post-Yugoslav sphere, has never had provisions specifically targeting Macedonians by origin or ethnic Macedonians from the neighbouring countries. This would be one of the main points of contestation during the parliamentary debates on the amendments to the Law in 2003/2004, as discussed below. Although emigrants were not explicitly defined in ethnic terms, diaspora communities from Macedonia do converge around an ethnic basis, primarily because of linguistic, cultural and religious differences or similarities. The new 2004 law expanded the definition of emigrants as any Macedonian citizen who had immigrated to another country, 'exclusive of his mother country', as will be further discussed below.

Another category eligible for facilitated naturalisation under the 1992 Law on Citizenship was that of alien spouses of Macedonian citizens (art. 9). As art. 9 did not apply to persons living in an extramarital partnership with a Macedonian citizen, in 1992 the Party for Democratic Prosperity (PDP), a party of the Albanian minority contested the consistency of art. 9 with the constitutional provision of equality of marital and extramarital relationships before the Constitutional Court (Petruševska 1998). This was largely because of the presence of a considerable number of cases of Albanian couples who had been married in traditional rather than civil marriage ceremonies, especially in rural, border areas, or cases which involved Macedonian citizens of Albanian origin who had spouses from Kosovo or Albania.¹³ However, the Court's interpretation stated that 'the legislature, authorised by the Constitution of the Republic of Macedonia to stipulate specific conditions for an alien's acquisition of Macedonian citizenship, disregarded the emphasis of this provision on the institution of marriage and not on the status of the person concerned - a citizen of the Republic of Macedonia or an alien' (Petruševska 1998: 173). Consequently, the law was not amended.

On 2 March 1999, following the Kosovo crisis and the NATO bombardment of the Federal Republic of Yugoslavia, the Government of Macedonia issued a decision stating that 'the persons coming from FRY whose lives, security or freedom are in danger from the internal armed conflict, and which are directly coming from the territory of this state to request protection in Republic of Macedonia, [are] to be treated with the status of humanitarian assisted persons.' Furthermore, 'having in mind the economical possibilities of RM, the reasons of national security and public peace and order, the right to temporary assistance [is] to be provided to maximum 20,000 persons.'¹⁴ However, during 1999 Macedonia eventually received 344,500 refugees, most of whom repatriated during the year, but at the end of the year 21,000 of them remained in the country (UNHCR 2000). The number fell to 9,050 the following year. This group consisted of both Roma and Albanian individuals from Kosovo and some of them, in particular the Roma, stayed in Macedonia because of the inability to return

¹³ Interview with Mr. Shpend Imeri, lawyer.

¹⁴ 'Decision of the Government of the Republic of Macedonia of 2 March 1999, to Grant Temporary Humanitarian Assisted Person (THAP)', UNHCR. <<http://www.unhcr.org/refworld/country,LEGAL,,LEGISLATION,MKD,4562d8b62,44c7969f4,0.html>> .

for security reasons, while others, including Albanian refugees, remained through intermarriage with Macedonian citizens or other personal reasons.

With the eruption of an internal armed conflict between the state security forces and Albanian guerilla groups in March 2001, Macedonia would be set on a path which would lead to major constitutional changes with the termination of the conflict in August 2001 and the signing of the *Ohrid Framework Agreement*¹⁵, which would eventually also open the way for the amendment of the Law on Citizenship in 2004.

2.4 The post-2001 period

Although the country was among the first to sign it in 1997, the *European Convention on Nationality* was ratified only in June 2003 and entered into force four months later. The long argued for amendment of the Law on Citizenship took place the following year. In February 2004, with the enactment of the Law for Changing and Amending the Law on Citizenship, a new residency requirement of eight years was introduced.¹⁶ The debate in the parliament concentrated around the residency requirement, as the right-wing opposition proposed one of ten years and opposed the inclusion of the transitional provision for former Yugoslav citizens by claiming that the 1992 Law already contained one.¹⁷ As the few media reports on the issue underlined, the President, who originally came from the main opposition party, refused to sign the Law when it was first voted in Parliament in November 2003.¹⁸ This was because it did not provide any basis for the acquisition of Macedonian citizenship for all

¹⁵ Signed on 13 August 2001, under a significant international pressure and after extensive internal political bargaining, the *Ohrid Framework Agreement* ended the hostilities and established that 'there are no territorial solutions to ethnic issues' and that 'the multi-ethnic character of Macedonia's society must be preserved and reflected in public life.' The original Preamble to the Macedonian Constitution was also amended: 'The citizens of the Republic of Macedonia, the Macedonian people, as well as citizens living within its borders who are part of the Albanian people, the Turkish people, the Vlach people, the Serbian people, the Romany people, the Bosniak people and others taking responsibility for the present and future of their fatherland, aware of and grateful to their predecessors for their sacrifice and dedication in their endeavours and struggle to create an independent and sovereign state of Macedonia, and responsible to future generations to preserve and develop everything that is valuable from the rich cultural inheritance and coexistence within Macedonia, equal in rights and obligations towards the common good.'

¹⁶ The enactment of the amendments to the Law on Citizenship was not accompanied by a public debate since at the same period (January-February 2004) the public was engaged in other debated issues which came as a result of the *Ohrid Framework Agreement*: the opening of an Albanian-language state university in Tetovo and the new territorial organisation which redrew municipal borders and for which a referendum was organised. In addition, only few days after the publication of the Law, Macedonia's President was tragically killed in a plane crash.

¹⁷ Vojnovska, Olivera 'Државјанство со осум години престој во земјава' [Citizenship With an Eight-Year Residency], *Utrinski* [daily newspaper], 23 January 2004.

¹⁸ Assembly of the Republic of Macedonia,
<http://www.sobranie.mk/default.asp?ItemID=A0EAF03BBB791A4CB6AEE4F690D9C9CA>

Macedonians by origin who were born and lived outside of Macedonia and did not qualify under the emigrants' provision.¹⁹

The signing of the loyalty oath was another novelty introduced by the 2004 amendments to the citizenship legislation. The language requirement provision was also amended with the addition that 'to the extent that one can easily communicate with the environment' would be considered in order to facilitate the passing of the language test for persons for whom it represented an obstacle, that is, people from rural areas of non-ethnic Macedonian origin. The security provision was preserved, but unlike the previous practice when the deciding bodies in the Ministry of Interior exercised their discretionary powers, the 2004 amendments established a new practice of providing a compulsory explanation for a refusal of an application, rendering the whole process more transparent.

Art. 11, both in the 1992 and in the 2004 Law, established that an emigrant and his descendants up to the first generation can acquire Macedonian citizenship even if they do not fulfil the residency requirement of eight years and they do not provide a release from their former citizenship. This article, however, was amended by a supplementary definition of an expatriate as 'a citizen of R Macedonia who emigrated from R Macedonia to another country – with the exception of it being a kin-state, regardless of gender, race, skin colour, national and social origin, political and religious belief, material and social status.' What some pointed out as a problematic provision was the element of the kin-state. This applied to members of the Albanian, Turkish or Serb traditional minorities and ethnic communities who decided to emigrate permanently to Albania, Turkey or Serbia respectively. It has been argued that this way of defining emigrants is particularly discriminatory to Turks who for the most part against their will emigrated from Macedonia in the 1950s and the 1960s (Imeri 2006). Another emerging question which would further complicate the implications of this article is related to the recent independence of Kosovo. It is still not clear if Kosovo, in addition to Albania, will be considered a kin-state for the Macedonian Albanians.

Moreover, somewhat belatedly in comparison to other post-Yugoslav states, in September 2009 voting rights were extended to the emigrant communities from Macedonia. They will have the right to vote in the presidential and parliamentary elections by electing three MPs in the three additional electoral districts (Europe/Africa, North and South America and Australia/Asia).²⁰ Unofficially, one of the thus elected MPs will be of Albanian origin, considering the predominant number of Macedonian emigrants of Albanian origin in Europe, and the remaining two will be of ethnic Macedonian origin.

¹⁹ Vojnovska, Olivera 'Државјанство со осум години престој во земјава' [Citizenship With an Eight-Year Residency], *Utrinski* [daily newspaper], 23 January 2004.

²⁰ 'Иселениците од вчера со право на глас' [Since Yesterday Emigrants Have Voting Rights], *Dnevnik* [daily newspaper], 2 September 2009.

Venco Donev, 'Хрватска и Бугарија ќе се откажат од гласањето на дијаспората' [Croatia and Bulgaria Will Abolish Diaspora Voting], *Nova Makedonija* [daily newspaper], 3 February 2010.

Most importantly, art. 14 introduced a new transitional provision to target former SFR Yugoslavia citizens. It established that this category of individuals 'may acquire citizenship of the Republic of Macedonia if within two years after the entry into force of this law they have submitted an application, provided that no criminal proceedings are being carried out against them in the Republic of Macedonia, for criminal acts which threaten the security and defence of the Republic.'²¹ Two further requirements for this category were to be of age (eighteen years old) and 'to be proficient in the Macedonian language to the extent that he or she can easily communicate in the environment'. The transitional period of two years was primarily aimed at resolving the pending cases of unregulated citizenship of mostly Roma and Albanian residents in Macedonia, who under the previous 1992 Law failed to fulfil and/or to prove the fifteen-year residency requirement. In December 2004, in order to facilitate the procedure and to avoid the initial mistake of not properly informing potential applicants, the Macedonian Government in coordination with the UNHCR launched a big information campaign. The media was used and explanatory brochures printed in the Roma and Albanian languages explained the citizenship application procedure in simpler terms.

This approach, along with the UNHCR-led project *Providing Free Legal Aid to Asylum and Citizenship Seekers* (Imeri 2006), brought the contested numbers debate to a somewhat conclusion. The available figures state that in the period between 1992 and 1998, about 120,000 applications for citizenship were received and considered, 95.4 per cent of which with a positive outcome and 4.6 per cent rejected (Lazarova-Trajkovska 1998). 2,130 cases of statelessness were reported after the transitional period for former Yugoslav citizens expired in November 1993 (Imeri 2006).

In the period from 2004 until 2009, 4,984 long-term habitual residents were granted citizenship of the Republic of Macedonia under the transitional provision of art. 14 for former Yugoslav citizens, 368 applications were rejected, and 167 decisions are pending (UNHCR 2009). These are part of the total of 98,990²² persons who acquired citizenship of R Macedonia from 1993 to 2008, of whom 88.6 per cent were citizens of the former Yugoslav republics (*Resolution of Migration Policy of R Macedonia* 2008). In August 2009 the UNHCR reported that, in the period from 2001 to 2009, 7,379 persons were subject to assisted and spontaneous repatriation and that 1,686 asylum seekers and refugees in total remain in the country, 1,088 of whom are under humanitarian protection.

The most recent amendment of the Citizenship Law in 2008 was aimed at facilitating the citizenship acquisition procedure for refugees and stateless persons, as

²¹ Закон за изменување и дополнување на Законот за државјанството на Република Македонија [Law for Changing and Amending the law on Citizenship of the Republic of Macedonia], *Службен весник на Република Македонија* [Official Gazette of the Republic of Macedonia], 08/2004.

²² The document quotes a figure of 60,585 (out of 98,990) who in this period acquired Macedonian citizenship through the transitional provisions for former Yugoslav citizens; 14,567 who acquired citizenship on the basis of marriage to a Macedonian citizen; 4,392 through regular naturalisation and 5,676 minors whose parents had acquired Macedonian citizenship.

a final stage in the process of resolving the legal status of the primarily Albanian and Roma refugees from the 1999 Kosovo crisis who could not return or voluntarily decided to stay in Macedonia. Art. 8 of the Law (as amended in 2008) establishes that stateless persons and persons with recognised status of refugees can apply for Macedonian citizenship if they have been legally resident in Macedonia for at least six years prior to the application. The amendment specifically targeted Kosovo refugees since it abolished the requirements for release from the last (in this case Serbian) citizenship and for not being prosecuted in the country of citizenship, as a number of Kosovo Albanians had criminal charges pressed against them in Serbia. This was considered a terminal step for solving the legal status of the Kosovo refugees.

3 The current citizenship regime

After the amendment to the Law on Citizenship in 2004, it was established that 'Citizenship is a legal link between the persons and the state and does not indicate the ethnic origin of the persons' (art. 1), a provision which did not exist in the first law from 1992.

3.1 Main modes of acquisition of Macedonian citizenship

The 1992 Law on Citizenship of the Republic of Macedonia as amended in 2004 and 2008 established four modes of acquisition of Macedonian citizenship:

- by origin (*ius sanguinis*);
- by birth (*ius soli*);
- by naturalisation;
- by international treaties.

As regulated by art. 4 of the Law, a child acquires Macedonian citizenship by origin if: at the moment of birth both parents are Macedonian citizens; at the moment of birth one parent is a Macedonian citizen and the child is born on the territory of the R Macedonia, unless both parents decide by mutual agreement that the child acquires the citizenship of the other parent; or at the moment of birth one parent is a Macedonian citizen, the other parent is unknown, of unknown citizenship or stateless and the child is born abroad. Adopted children whose one or both adoptive parents are Macedonian citizens also acquire Macedonian citizenship.

A child born abroad whose one parent is a Macedonian citizen at the moment of birth can acquire Macedonian citizenship by origin if by the age of eighteen is registered as a Macedonian citizen or assumes permanent residency on the territory of Macedonia with the Macedonian parent.

Macedonian citizenship can be granted also to an individual not registered by the parents, if by the age of 23 he or she submits a request for admission into Macedonian citizenship. In all of the cases mentioned above, the child will be considered a Macedonian citizen from the moment of birth regardless of when she or he was registered or admitted into Macedonian citizenship (art. 5).

Art. 6 regulates the acquisition of citizenship by birth on the territory of Macedonia and it applies to any child of unknown parents, parents of unknown citizenship or without citizenship, which is found or born on Macedonian territory. If by the age of fifteen it is established that the child's parents are foreign citizens and that the child would not become stateless, his or her Macedonian citizenship will be terminated.

Art. 7-18 regulate the procedure for acquisition of Macedonian citizenship by naturalisation: regular, facilitated, exclusive, naturalisation of minors and reacquisition of lost citizenship.

A foreign citizen must fulfil the following requirements in order to be considered for admission into Macedonian citizenship:

- 1) to be at least eighteen years old at the time of application;
- 2) to have had legal registered residence in Macedonia for at least eight years;
- 3) to have an accommodation and permanent source of subsistence means allowing for material and social security;
- 4) not to have been sentenced to imprisonment of minimum duration of one year in the country of his citizenship for acts punishable according to the regulations of Macedonia;
- 5) there should not be criminal proceedings neither in Macedonia nor in the country of his or her citizenship;
- 6) to be fluent in Macedonian to the extent that one can easily communicate in the environment;
- 7) there hasn't been a measure of prohibition of residence in Macedonia;
- 8) the applicant's admission into the citizenship of R Macedonia should not pose a threat for the security and defence of the country;
- 9) to sign a loyalty oath;
- 10) to provide a release form the previous citizenship or a proof that it will be provided after the acquisition of Macedonian citizenship.

The procedure of facilitated naturalisation applies to three categories of persons: individuals with a recognised status of a refugee or stateless individuals (art. 8); emigrants from R Macedonia and their descendants up to the first generation (art. 11); and foreigners whose spouse is a Macedonian citizen (art. 12).

A foreigner, who has been married to a Macedonian citizen for at least three years and until the moment of his request for acquisition of Macedonian citizenship has been continuously resident for at least one year in Macedonia, can obtain Macedonian citizenship even though he or she does not fulfil the language requirement and does not provide a release from the original citizenship. A foreign citizen who has been married to a Macedonian citizen for at least eight years, permanently and legally resides abroad and has a strong and effective connection with R. Macedonia can acquire Macedonian citizenship through naturalisation even though she or he does not fulfil the above-mentioned requirements for ordinary naturalisation.

Art. 14 establishes the possibility for exclusive naturalisation for foreigners having attained eighteen years of age and whose admission into Macedonian citizenship does not pose a threat for the security and defence of the country, 'if that represents a particular scientific, economic, cultural, sports or other national interest'. In this case it is the government that issues an opinion and determines which those actual national interests are.

The procedures for naturalisation of minors are determined by art. 15: 'If both parents have acquired Macedonian citizenship by naturalisation, their minor child also acquires Macedonian citizenship. If one parent has acquired Macedonian citizenship through naturalisation, his/her minor child also acquires Macedonian citizenship if requested from the parent and the child lives in R Macedonia, or upon a request from both of the parents and the child lives abroad'. Additionally, in *adoptio plena* situations, if one of the adoptive parents has acquired Macedonian citizenship through naturalisation, their minor adopted child living with the parent in Macedonia also becomes a Macedonian citizen. In any of the above cases when the child is fifteen or above his or her consent is also required.

Reacquisition of citizenship is regulated by art. 18 and it strictly applies to any 'person who as a minor lost the Macedonian citizenship by release'. It is possible to reacquire Macedonian citizenship if the applicant 'by the age of 25 legally and continuously resides in Macedonia for at least three years and files a request for reacquisition of Macedonian citizenship.'

Lastly, the fourth mode of acquisition of Macedonian citizenship under international agreements is established by art. 3, but without further elaboration of the details.

If a person is not registered in the register of citizens, or there is not a record of his or her birth, 'the Ministry of Interior will determine the citizenship of R. Macedonia and the data will be additionally entered into the register of citizens' (art. 27).

3.2 Main modes of loss of Macedonian citizenship

Art. 19 of the Law foresees two modes of loss of the citizenship of R Macedonia: by release or request and according to international agreements. Based on the principles of prevention of statelessness and free will²³, the Macedonian citizenship legislation does not provide for deprivation, but provides for reversal of naturalisation in the event of fraud (art. 17).

A cessation of Macedonian citizenship by release is obtained by a person filing an individual request and fulfilling the following conditions:

- 1) has reached eighteen years of age;
- 2) has regulated the military service duty;

²³ 'The Former Yugoslav Republic of Macedonia', *European Bulletin on Nationality*, http://www.coe.int/t/e/legal_affairs/legal_co-operation/foreigners_and_citizens/nationality/documents/bulletin/0_Index.asp#TopOfPage

- 3) has settled any property-related, legal and other obligations towards state bodies, organisations, companies and other legal and natural persons;
- 4) has settled any property-related, legal and other obligations arising from marital status and parent-children relationships for persons living in R Macedonia;
- 5) has submitted a proof from the competent authority that a bankruptcy procedure, or a procedure for a liquidation of a trading company whose founder or co-owner the applicant is, had not been initiated;
- 6) is not subject to criminal prosecution in R Macedonia for a crime prosecuted ex official, or has already served a sentence if sentenced to imprisonment;
- 7) holds a foreign citizenship or can prove that he or she will acquire foreign citizenship.

The relevant state organ can refuse the request for release from the citizenship of R Macedonia even if all conditions are fulfilled if 'reasons for the protection of the security and the defence of R Macedonia, or other reasons arising from the relations with a foreign country require this' (art. 20). The same article establishes a compulsory explanation to be provided by the relevant state organ on the reasons for the refusal of the requested release. In the period 1993-2008, 20,803 people received release from Macedonian citizenship (*Resolution on Migration of R. Macedonia* 2008).

The last two provisions on the loss of Macedonian citizenship relate to minor children. Art. 22 regulates the loss of citizenship for minor children who lose their Macedonian citizenship if requested by the parents who obtained release from Macedonian citizenship, or if one of the parents obtains a release and the other one agrees that the child loses his Macedonian citizenship. If the parents do not live together, the child loses his Macedonian citizenship by release if requested by the parent with whom the child lives and who has also applied for a release, or if the parent is a foreign citizen. In both cases consent is required by the other parent. If one of the parents does not agree to the release of the child from Macedonian citizenship, the child can obtain the release if the relevant organ gives a consent considering the child's best interests. If in all of the above cases the child has already reached fifteen years of age, his own consent is also required. The same age regulation applies in the case of an adopted child (art. 23). A minor adopted child loses the Macedonian citizenship upon the request of his adoptive parents who are foreign citizens.

3.3 Procedures

The right to appeal is guaranteed by art. 15 of the Constitution of the Republic of Macedonia. In the Law on Citizenship, it is art. 24 that regulates the complaints procedure: 'Against the decision of para. 2 of this article the applicant may lodge an appeal with the competent Commission of the Government of the Republic of Macedonia. Against the decision of the competent Commission of the Government of the Republic of Macedonia he may initiate an administrative dispute.' Thus, after a negative decision is handed in to an applicant for citizenship, he or she is informed of his or her right to appeal to the governmental Second Level Commission. If the

Commission annuls the first instance decision, the case is sent back for reconsideration to the Ministry of Interior. If the Commission's decision is also negative, the applicant is informed of the right to bring the case to the Supreme Court (Lazarova-Trajkovska 1998). It has been reported that the majority of cases in the Supreme Court archives on this matter (around 70-73 per cent) relate to persons who failed to prove the required residency requirement. This is generally because, before the dissolution of Yugoslavia, they had changed residence and moved to another federal republic without reporting it (Petruševska 1998).²⁴ The electronic archive of the Supreme Court of the Republic of Macedonia contains citizenship-related cases dating back to 2002 only. As has been noted throughout this paper and as will be further analysed below, most of the cases with unregulated citizenship were resolved with the 2004 amendments to the Law on Citizenship and the transitory period of two years for former Yugoslav citizens. Two cases²⁵ drawn from the archives of the Supreme Court involving actions brought to contest negative decisions of the Ministry of Interior serve to demonstrate some gaps and differences in the interpretation of the law, as well as its selective implementation.

In the first Supreme Court ruling²⁶ the plaintiff, having filed a request for acquisition of Macedonian citizenship on 7 July 1999 on the grounds of marriage to a Macedonian citizen (facilitated naturalisation), received a negative decision from the Ministry of Interior because she no longer resided at the address quoted in the Identity Card for Foreigners and because she obtained a divorce on 27 March 2000. However, the Court found that the decision was legally unfounded, as according to art. 9 of the Law on Citizenship a foreigner who has been married to a Macedonian citizen for at least three years and has legally resided in Macedonia for at least one year up to the moment of filing a request for acquisition of Macedonian citizenship can acquire Macedonian citizenship through naturalisation. The court found that she had been legally resident since the date of issue of the Identity Card for Foreigners on 14 August 1997, and although divorced at the time of application in July 1999 she had been married to a Macedonian citizen since 20 April 1992. Hence, the plaintiff fulfilled all of the conditions for acquisition of Macedonian citizenship through naturalisation.

The second Supreme Court ruling²⁷ concerns the nullification of a decision for acquisition of the citizenship of R. Macedonia (art. 14 of the Law on Citizenship): 'The

²⁴ Furthermore, many individuals who moved from Kosovo or other republics to rural areas in Macedonia did not register their move or residency with the authorities, usually for lack of knowledge.

²⁵ For additional examples see Shpend Imeri (ed.) (2006), *Citizenship*. Gostivar: Association for Democratic Initiatives.

²⁶ Документ од судската практика У. Бр. 823/01 (Legal Practice Document U. No. 823/01 of 20 March 2003), Supreme Court of the Republic of Macedonia. <<http://www.vrhoven.sud.mk/VSUD/WWWVsud.nsf/5629c02a2d13a73bc12571080036278b/c12570d7002bcf6cc12571800031960f?OpenDocument>>.

²⁷ Документ од судската практика У. Бр. 1913/00 (Legal Practice Document U. No. 1913/00 of 10 April 2002), Supreme Court of the Republic of Macedonia. <<http://www.vrhoven.sud.mk/VSUD/WWWVsud.nsf/5629c02a2d13a73bc12571080036278b/c12570d7002bcf6cc125718000309dad?OpenDocument>>

decision for admission into citizenship of the Republic of Macedonia may be revoked after the delivery if it is established that the alien has given false or incorrect data, respectively has used forged documents when submitting the application for admission into citizenship by naturalisation.’ The plaintiff and her parents lost their Macedonian and Yugoslav citizenships by release on 2 March 1965 after which they acquired Turkish citizenship. The plaintiff acquired Macedonian citizenship on 21 March 1995, but a decision dated 20 December 1996 annulled the previous decision for acquisition of Macedonian citizenship and she was erased from the citizens’ register. The relevant citizenship authorities based their decision for nullification of the decision for admission into Macedonian citizenship on art. 26 of the Law on Citizenship. This provides that ‘The person who according to the former regulations has held citizenship of the Republic of Macedonia, is considered a national of the Republic of Macedonia pursuant to this law’. Although her parents reacquired their Macedonian and Yugoslav citizenship in 1989, since the plaintiff at that time was 33 years old, she should have filed a separate request for reacquisition of citizenship. During the administrative procedure however, the plaintiff submitted proof that she returned to Macedonia as a minor in 1971 with her parents, when the father filed a request for the acquisition of Macedonian citizenship for the whole family. The Court also referred to art. 4 of the Constitution which guarantees the citizenship of R Macedonia, and found that ‘a decision for admission into Macedonian citizenship can be annulled only if the use of forged documents is established by a valid court ruling during a criminal procedure against the foreigner who filed the request for acquisition of citizenship.’ Hence, the nullification of the decision granting acquisition of citizenship was unfounded.

Certain cases involving persons who exhausted judicial remedies or encountered some other administrative obstacle were brought to the attention of the Ombudsman. While in 2006 80.4 per cent of the total numbers of complaints in the category of Civil Conditions and Other Interior Issues were related to citizenship, this number fell to 71.4 per cent in 2007 and 49.24 per cent in 2008.²⁸ As concluded by the Ombudsman, the number of citizenship-related complaints significantly decreased over the years following the amendments to the Law in 2004 ‘as a result of the transitional provision of the Law on Citizenship for citizens of other republics in the former SFRY’ (Ombudsman 2008: 30). The last Ombudsman report stated that ‘the procedure for obtaining citizenship is with an increased number of positive decisions, but the duration of the procedure and the number of persons applying for dismissal of citizenship or double citizenship is still worrying’ (Ombudsman 2009: 35). In addition to the long duration of the procedure, the language test remains one of the more prominent obstacles in the naturalisation procedure, as demonstrated by a concrete case submitted to the Ombudsman in 2008. A citizen from the Macedonian town of Tetovo submitted an application for acquisition of Macedonian citizenship in 2005, but the procedure was postponed under the language proficiency requirement, although

²⁸ *Annual Reports 2006, 2007 and 2008* (2006, 2007, 2008). Skopje: Republic of Macedonia OMBUDSMAN.

the applicant had successfully passed the final high-school exam in the town of Tetovo. After the Ombudsman intervened, the governmental Language Commission determined that the complainant fulfilled the language proficiency requirement and consequently the Ministry of Interior enacted a decision for the complainant's admission into the citizenship of R Macedonia (Ombudsman 2009).

4 Current political debates and reform plans

Although the majority of pertinent citizenship-related issues were resolved with the post-2001 amendments to the Law on Citizenship, there are still ongoing debates and envisioned reforms which are indirectly related to citizenship. The politics of numbers as reflected in census and electoral registration, the civil registration of the Roma community, double citizenship, and extending citizenship to diaspora communities are some of the issues which still incite public debate.

After the termination of the internal armed conflict in August 2001, the state conducted an internationally monitored population census in 2002. Its final results were contested by both the Albanian and the Macedonian sides, the former claiming their ethnic group was under-counted, the latter that the Albanian community was over-counted.²⁹ Since the Yugoslav socialist era, ethnic proportionality has been paramount in determining political processes and internal relations, self-understanding and perceptions of the other. Thus, the percentages remained an essential dimension of the new Macedonian state, as often they determined the mode and extent of granting certain rights.³⁰ Furthermore, in symbolic terms, numbers have been perceived as being important in mapping imagined communities and justifying or determining claims on disputed or ethnically-mixed territories.

Another closely related issue, which has received considerable media attention, is a state-sponsored ongoing project to revise electoral registration. According to the last census the country had a population of 2,022,547 but the electoral registry contains only 1,792,082 registered voters.³¹ The local and general elections in the last ten years have pointed to the so-called 'Macedonian absurd' where there are estimated 300,000 virtual or inexistent voters and several municipalities where the number of registered voters is higher than the number of residents.³² The problem has been identified mainly because of the high number of registered voters who over the years moved out

²⁹ For the complete data of the 2002 census and its second data edition from 2004 see the State Statistical Office website, <http://www.stat.gov.mk/english/glavna_eng.asp?br=18>.

³⁰ This gained particular importance after 2001, as the *Ohrid Framework Agreement* foresaw that 'any other language spoken by at least twenty per cent of the population is also an official language, as set forth herein'. Additionally, 'with respect to local self-government, in municipalities where a community comprises at least twenty percent of the population of the municipality, the language of that community will be used as an official language in addition to Macedonian'.

³¹ Tatjana Popovska, 'Фантомски гласачи ќе решаваат за името' [Phantom voters will decide over the name], *Dnevnik* [daily newspaper], 22 October 2009.

³² Katica Cangova, 'Личните карти ќе го чистат Избирачкиот список' [New Identity Cards will Revise the Electoral Registry], *Utrinski* [daily newspaper], 25 November 2009.

of the country but have not reported their change of residence to the relevant authorities. The State Electoral Commission, the Ministry of Justice and the Ministry of Interior are involved in an ongoing project for comprehensive revision of the Electoral Registry, which should be completed by the end of 2010. This, among other things, involves revision of the registers of birth and death from the last thirty years. The authorities believe that the entire process will be facilitated by the issuing of new biometric personal documents which should be in place for all citizens by 2012.³³

Two indirectly related problems to the one quoted above are the civil registration of the Roma community and the number of Macedonian citizens residing and working abroad. The former problem has long been known to the governmental bodies, the civil society sector and the UNHCR but it has never received the close attention which would produce a successful solution. It has been pointed out that the failure to register Roma children at birth leaves many of them without a civic identity and stripped of social benefits.³⁴ As recent research and observations by the NGO sector demonstrate, 840 Roma children were identified as having incomplete documentation, 338 of whom were not registered at all (UNICEF and Centre for Human Rights and Conflict Resolution 2009). Registering children at birth has been a permanent problem for the Roma because of complex administrative procedures which require the submission of additional documents such as certificates of marriage and medical certificates. However, recently progress has been made in registering 2,834 Roma individuals, whose existence was previously never statistically recorded. As part of a project involving UNHCR, the Ministry of Interior, the Ministry of Labour and several NGOs, a considerable number of individuals who did not possess any identification personal documents or had some with expired validity were registered and obtained the necessary documents which would allow them access to health, education and other benefits. However, this remains a pending issue, as a comprehensive solution would require a grass-roots approach to educate the Roma community and to eliminate the different forms of discrimination that they still experience.

As mentioned above, one of the main reasons for the urgent need of revision of the electoral registry is the increasing numbers of Macedonian citizens who decide to move abroad permanently and do not register this with the authorities. According to World Bank estimates for 2005, there were 370,826 emigrants from Macedonia, or 18.2 per cent of the entire population. When considered in view of the recently announced visa liberalisation by the European Union for Macedonia, Serbia and Montenegro, this fact opens up further considerations of a probable increase of emigrant flows towards

³³ Ministry of Interior of Republic of Macedonia (2010) <<http://www.moi.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=1>>.

³⁴ 'Децата на улица се без идентитет' [Street Children Have No Identity], *Dnevnik* [daily newspaper], 10 September 2009.

'Документи и за неевидентираниите Роми' [Documents for the Unregistered Roma], *Dnevnik* [daily newspaper], 3 December 2009.

the EU countries, in particular intellectual emigration, as well as an increase in the incidence of double citizenship.

The complex political developments in the region since 1991 involving armed conflicts and a decade of economic hardships, as well as the entry of Bulgaria into the EU in 2007 and the Kosovar independence in 2008, caused some increase in the number of cases of double citizenship, the most common examples being Macedonian-Kosovar and Macedonian-Bulgarian. The former are largely motivated by the frequent presence of family ties of Albanians across the border and greater mobility for educational or work purposes, but in some cases are also motivated by symbolic impulses. The latter have been mostly encouraged by economical interests and possibilities of mobility within the EU. Although there are no official figures as yet, an estimated figure of applications for acquisition of Bulgarian citizenship by origin by Macedonian citizens provided by the Bulgarian Ministry of Justice quotes a total of 32,702 in 2007, with a permanent increase since 2000 when there were only 113 submitted applications (Smilov and Jileva 2008). In the same period, 10,850 Macedonian citizens obtained Bulgarian citizenship through naturalisation. Battles over historical legacies, symbols and identity have been going on between Macedonia and Bulgaria since Macedonia acquired its statehood within Yugoslavia in 1945. In the last decade, these symbolic battles have entered into the language of citizenship, by employing legal means for obtaining symbolic and disputed aims. The Bulgarian state still considers Macedonia to be inhabited by ethnic Bulgarians; a fact alluded to by recently proposed draft amendments to the Bulgarian Citizenship law and statements by Bozhidar Dimitrov, the minister without portfolio responsible for Bulgarians abroad.³⁵ The controversial amendments foresee a facilitated procedure for acquisition of citizenship for ethnic Bulgarians graduating from Bulgarian universities³⁶, as well as reinstating to Bulgarians and their descendants living in Macedonia, Eastern Serbia and Western Thrace in Greece their Bulgarian citizenship they used to have as citizens of the occupied territories from 1942. Unofficially, since the entry of Bulgaria into the EU and in particular with the recent decision on visa liberalisation for Macedonia, the number of applications for Bulgarian citizenship by Macedonian citizens decreased and Bulgaria was obliged to revise its procedures of granting citizenship to Macedonians who did not fulfil all of the conditions. The majority used to report fake residency in Bulgaria and used the Bulgarian passport or ID for legal economic migration within the EU. As certain recently publicised cases of double Macedonian-

³⁵ 'Between three and four million Bulgarians live abroad', *The Sofia Echo*, 6 October 2009. <http://www.sofiaecho.com/2009/10/06/795334_between-three-and-four-million-bulgarians-live-abroad>.

³⁶ 'Етническите българи, завършили висше образование у нас, ще получават по-бързо гражданство' (2009), [Ethnic Bulgarians with Bulgarian University Degrees Will Acquire Bulgarian Citizenship Faster], *Dnevnik* [daily newspaper], 5 October 2009. <http://www.dnevnik.bg/bulgaria/2009/10/05/794919_etnicheskite_bulgari_zavurshili_visshe_obrazovanie_u_nas>.

Bulgarian citizenship have demonstrated,³⁷ further complications may arise, especially if the Bulgarian state decides to adopt the above-mentioned proposed amendments which obviously target Macedonian citizens.

As part of a small nation engaged in several disputes over identity and the constitutional name with its neighbours, Macedonia and its citizens, particularly those who make up the majority of ethnic Macedonian origin, have always perceived themselves as being threatened, internally and externally, in their existence as a nation. From this observation follows the importance of numbers and, subsequently, of ethnic Macedonian diaspora communities. As the recently drafted *Resolution on Migration Policy of Republic of Macedonia 2009-2014* shows, the government states as its goals 'mapping of the diaspora' through a database of migrants, computerisation of civil registers, and facilitation of return of citizens legally residing abroad that should reverse the brain-drain effect.³⁸

5 Conclusion

The past two decades saw Macedonia passing through some crucial stages of state-building and redefining of its own image, political organisation and legal system. Having its security seriously threatened on several occasions and its existence put into question, the country battled its way relatively successfully through to the status of candidate country for EU membership in 2005. Thus far, the international factor, in particular the influence of the US as well as the EU, has played an essential role in all of Macedonia's core political changes and transformative processes since 1991. From the UNPROFOR and the UNPREDEP missions which had a presence on the territory of Macedonia from 1991 to 1999 to the internationally sponsored *Ohrid Framework Agreement*, the international community assumed an indispensable stabilising role which clearly aimed at preserving Macedonia as a unitary state and ascribing to the country an important role in the Balkan geo-political space.³⁹ The evolution of the

³⁷ A former Minister of Health who holds both Macedonian and Bulgarian citizenship and was sought by Macedonian authorities for criminal charges, managed to escape extradition to Macedonia from Poland because of his Bulgarian citizenship. Similarly, a woman who held double Macedonian-Bulgarian citizenship and who was imprisoned for violating certain provisions of family law caused a diplomatic scandal and an intervention by the Bulgarian President asking for her release claiming she was criminally prosecuted because of her alleged Bulgarian identity.

³⁸ The most recent measure undertaken by the Macedonian Government, in an obvious attempt to enlarge the national body, is a bilateral social insurance agreement with the Australian Government which targets returning Macedonian expatriates, Macedonian nationals living in Australia, Australian citizens of Macedonian descent and Australian citizens living in Macedonia. Thus, Macedonian emigrants living and working in Australia will be able to have their Australian pensions transferred and paid in Macedonia if they decide to return to Macedonia.

'Macedonia, Australia sign social insurance agreement', *Government of the Republic of Macedonia*. 26 October 2009. <<http://www.vlada.mk/?q=node/4321>>.

³⁹ Both the UNPROFOR and the UNPREDEP mandates were defined as 'to monitor and report any developments in the border areas which could undermine confidence and stability in the former Yugoslav Republic of Macedonia and threaten its territory'.

citizenship regime moved in parallel with all these transformative processes. With the most recent amendments of the last five years, it has fully adapted to the standards of the *European Convention on Nationality* and permitted the resolution of most cases of unregulated citizenship status caused by the dissolution of Yugoslavia in 1991. Furthermore, the country, at least nominally, has made a step towards establishing itself as a civic state,⁴⁰ and in essence and in practice as a multi-ethnic state. With the 2001 constitutional changes 'minorities' have been replaced with 'communities' in the official terminology and their proportional representation was guaranteed.

Yet, what is already well established in the legal jargon and on paper remains a challenge when it comes to actual inter-ethnic relations, day-to-day practices and implementation of the law. Segregated education, discrimination against the Roma, and low living standards inspire people to emigrate or to seek a second citizenship and the highly politicised life in a society where competition over numbers, representation and identities is still frequent, poses many challenges. The deadlock following years of UN sponsored negotiations with Greece over the name issue additionally threatens the still fragile internal political and inter-ethnic balance. Once the last obstacle comprising the ongoing argument with Greece over the constitutional name of Macedonia is removed, the country could progress further towards full membership into the NATO and the EU. Regarding its status as a candidate country for full membership into the EU, a further step was made with the recent decision that the citizens of Macedonia, Serbia and Montenegro are allowed visa-free travel in the EU Schengen area. The prospect of EU membership is a goal that unites politicians and citizens on all sides of Macedonia's political and ethnic debates. Macedonia seems to be heading towards the prospect of European citizenship although with a still undetermined timetable.

⁴⁰ As quoted above, the amended Preamble starts with 'The citizens of the Republic of Macedonia.' Similarly, the amended Law on Citizenship added the above-cited emphasis that 'Citizenship is a legal link between the individuals and the state and does not indicate the ethnic origin of the individuals'.

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